

MESSAGE FROM THE GOVERNOR

The Speaker laid before the House and had read the following message from the Governor:

Austin, Texas, June 14th, 1941.

To the Members of the House of Representatives of the Forty-seventh Legislature:

I am returning herewith, without my approval, House Bill No. 73, which is a bill lessening the penalty now provided by law for drunken and drinking driving of automobiles and striking from the statute on that subject the provision making it a criminal offense to operate an an automobile on the street or highway when the driver is "in any degree" under the influence of intoxicating liquor.

This bill deals with a most important subject, as it would affect to a large degree the safety of life and limb, besides the enormous item of property damage, involved in the large and rapidly increasing motor traffic on the roads and streets of Texas by more than 1,700,000 regis-

tered motor vehicles belonging to Texas citizens, in addition to the many thousands of motor vehicles belonging to citizens of other States which daily traverse our highways. The bill seeks to amend the article of the Penal Code of Texas regulating the driving or operating of automobiles in this State by persons under the influence of intoxicating liquor, which reads as follows:

"Article 802. Any person who drives or operates an automobile or any other motor vehicle upon any street or alley, or any other place within the limits of any incorporated city, town, or village, or upon any public road or highway in this State while such person is intoxicated, or in any degree under the influence of intoxicating liquor, shall upon conviction be confined in the penitentiary for not more than two (2) years, or be confined in the county jail for not less than five (5) days nor more than ninety (90) days and fined not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500.00)."

If House Bill No. 73 which I am returning herewith should become the law, it would amend this existing article in our Penal Code in at least two vital respects, either of which, I am convinced, would be most damaging to the public interest:

(1) It would strike from the existing statute the words "in any degree," which I have capitalized in the above quotation of the article, before the words "under the influence of intoxicating liquor." This would have the effect, by necessary implication, of amending the above quoted law making it a criminal offense to drive or operate an automobile by any person partially intoxicated or only in a "degree" under the influence of intoxicating liquor and require the State to prove in each case that the defendant was not only partially under the influence of intoxicating liquor but was entirely "under the influence."

It has not been long since this precise amendment proposed by House Bill No. 73 was tried out by the people of Texas. In 1935, after State and Federal prohibition were repealed, the Legislature amended

this same Article 802 of the Penal Code as herein quoted by striking out the words "or in any degree under the influence of intoxicating liquor," but left the article otherwise in substantially its present form. This action of the Legislature was followed by a substantial increase in the number of automobile accidents on the highways of Texas; and, two years later, at the first opportunity of the people of Texas to express themselves upon the subject, an Act of the Legislature of 1937 was passed which restored the bill to its present form as above quoted, which was substantially the form of the same Article 802 of the Penal Code prior to the passage of the Act of 1935.

In "Texas Traffic Accidents—1940," compiled and issued by the Department of Public Safety of Texas, on page 26, it is stated:

"In 1937, an (all) all-time high in economic loss from Texas automobile accidents was recorded. This amount reached the astounding figure of \$66,160,525. The years 1938 and 1939 brought sharp decreases in this amount, to \$47,084,425 and \$45,861,175 respectively.

"The year 1940, however, saw economic loss again soar well over the fifty million mark to \$50,906,275 (as compared with \$66,160,525 for 1937). This sudden rise over the two previous years can be attributed primarily to vast national defense activities in Texas and increased motor vehicle travel.

"The figures on the opposite page (those I have quoted) are based on the formula as follows: \$11,500 for each fatality, \$425 for each personal injury, and \$125 for each property damage accident. These amounts embrace funeral expenses, hospitalization, loss of personal earnings, damage to automobiles, personal belongings, etc."

Of course, all of the accidents mentioned in this report for the years in question were not caused or promoted by the use of intoxicating liquor but a very substantial proportion of them were of alcoholic origin, certainly more than ten per cent of the whole number.

As another example: A statistical compilation by the Safety Division of

the State Highway Department reported that the drinking driver and passenger were the cause of 249 deaths on Texas highways during the first nine months of 1939, or more than twenty per cent of the 1,098 traffic deaths during that period. (See Dallas News, Dec. 9, 1939.)

1937 was the year in which this amendment, substantially the same as the one provided in House Bill No. 73, was repealed and was the last year during any portion of which that amendment was effective. In the light of this official record, it would seem indisputable that public safety would not be subserved by the reenactment of this amendment proposed by House Bill No. 73, and which was repealed by the Legislature of 1937 after two years trial.

(2) Another amendment to Article 802 which is provided by House Bill No. 73 is revolutionary in its character and would undoubtedly enormously reduce and largely destroy the efficacy of the existing statute for the protection of life and limb on the streets and highways of Texas. Since this law, Article 802 of the Penal Code, was first enacted eighteen years ago, when the automobile traffic had first begun to appear on the highways of Texas, it has always provided that juries might inflict a penitentiary sentence for its violation, or it might be punished by fine and imprisonment in jail for a limited term at the discretion of the court or jury disposing of the case; but House Bill No. 73, for the first time in the history of this legislation in Texas, would take away from juries and courts all power to impose a penitentiary sentence for driving an automobile on a Texas highway or street while drunk or "under the influence of intoxicating liquor" unless the defendant shall have been convicted of the "misdemeanor offense" prescribed by House Bill No. 73 of driving or operating an automobile while intoxicated or under the influence of intoxicating liquor. Clearly this provision would wipe the slate clean as to hundreds of drunken and drinking drivers who have been convicted and fined or sent to jail for violations of the Penal Code prior to the enactment of House Bill No. 73 and would

expressly remove all danger or fear of a penitentiary sentence being imposed hereafter unless and until the defendant shall have been convicted of a misdemeanor under House Bill No. 73.

But we are told that juries will not convict defendants charged with drunken or drinking driving of automobiles if they are compelled to impose a penitentiary sentence. The history of Texas would seem conclusively to refute this theory,—from the days when the pioneers were fighting the horse thieves down through the days, beginning a half century or more ago, during which the Penal Code of Texas has always prescribed a felony penalty for stealing "any cattle or hog" or "any sheep or goat," regardless of value; followed by the days of the decade before prohibition when the Legislature of Texas, wets and drys alike, passed a statute under which so many bootleggers were sent to the penitentiary, making it a felony to sell liquor in any county or precinct or district where local option was adopted. However this may be, it is obviously wholly unnecessary to pass any law in order to relieve juries or courts of the necessity of imposing a penitentiary sentence for violating Article 802 of the Penal Code, for it expressly states that a person guilty of its violation may "be confined in the county jail for not less than five (5) days nor more than ninety (90) days and fined not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500)," or "confined in the penitentiary for not more than two years."

However praiseworthy the purpose of those supporting House Bill No. 73 may be,—and I have no grounds for criticizing anyone's motives nor any purpose to do so,—undoubtedly the result of this bill becoming a law would be to substantially increase the sale of intoxicating liquors to motorists in Texas and to substantially increase the number of fatal and nonfatal automobile accidents of drivers and pedestrians brought to our attention every day in the newspapers. There is already far too much of this traffic in alcoholic liquors sold to motorists in Texas. Along our high-

ways,—both the country roads and the streets of the cities and towns,—we see on every hand enormous and elaborate signs urging passing motorists to purchase and consume intoxicating liquors, and on the busiest streets in some of our leading cities varicolored electric signs, working twenty-four hours a day, flash legends urging passing motorists to stop and drink liquor. A prominent example reads: "Liquors. Stop and Shop."

The Constitution of Texas requires that any bill introduced in the Legislature shall contain only one subject "which shall be expressed in its title." I cannot escape the conviction that it is no exaggeration to say that the title of this House Bill No. 73 should state the obvious fact that it is a bill, the enactment of which will substantially increase the sale of intoxicating liquors to motorists in Texas and which will inevitably increase substantially the number of fatal and nonfatal automobile accidents on Texas roads and streets. This traffic of the brewers and the liquor trade in the sale of fatal and nonfatal automobile accidents on Texas highways for profit ought not to be encouraged or promoted by legislation. It ought to be stopped.

Article 802 as herein quoted is plain and simple and easy to be understood. It means what it says and says what it means and what it ought to mean. Certainly there is nothing harsh in giving courts and juries the power, in a case in which they have heard the arguments and the facts, to impose a penitentiary sentence of not more than two years; and who can doubt that when it should be heralded over Texas that a new law had been enacted expressly providing that no person guilty of driving an automobile while under the influence of intoxicating liquor should be sent to the penitentiary for his first offense hereafter committed, and could only be punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500), or by a jail sentence of not less than ten days (10) nor more than two (2) years, that there will be a substantial increase and a constantly accelerated increase in the drinking

of intoxicating liquors by motorists. The only safe rule is the rule adopted by the Texas Highway Commission, at the instance of a noble band of Texas women, the Texas W. C. T. U., when it posted two hundred fifty (250) signs on Texas highways bearing this unanswerable legend:

"If you drink don't drive;
If you drive don't drink."

There is no safety in any other rule.

The railroads of America settled this question after years of experience and study of the kindred subject of safety in the operation of railroad trains, and, years before prohibition was adopted, they united in adopting and strictly enforcing throughout the Nation their "Rule G," applying to all men in the railroad service on all railroads, which reads as follows:

"Rule G. The use of intoxicants while on or off duty, or the visiting of saloons or places where liquor is sold, incapacitates men for railroad service, and is prohibited. Any violation of this rule will be sufficient for dismissal."

Article 802 of the Penal Code of Texas ought not to be repealed or emasculated. Hundreds of human lives of Texas motorists, men, women, and children, will undoubtedly be saved, and hundreds of gruesome nonfatal automobile accidents on our roads and streets will be averted if it is preserved and strengthened and rigidly enforced.

Respectfully submitted,
W. LEE O'DANIEL,
Governor of Texas.

(Pending reading of the Governor's message, Mr. Skiles and Mr. Carlton occupied the Chair temporarily.)

(Speaker in the Chair.)